

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10480-RGS

SILAS CALHOUN AND EMILY
CALHOUN, INDIVIDUALLY, AND AS
PARENTS AND NEXT FRIENDS OF
ESTELLA CALHOUN,

Plaintiffs

v.

UNITED STATES OF AMERICA,
ERIC C. DAUB, M.D. AND
MARIANNE SUTTON, M.D.,

Defendants

**ANSWER OF DEFENDANT, MARIANNE SUTTON, M.D., TO PLAINTIFFS'
COMPLAINT AND DEMAND FOR JURY TRIAL**

The defendant, Marianne Sutton, M.D., hereby answers plaintiffs' Complaint as follows:

FIRST DEFENSE

Parties and Jurisdiction

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.
- 2-3. The allegations contained in paragraphs 2 and 3 concern defendants other than this defendant, and therefore, no answer is required.
4. The defendant admits the allegations of paragraph 4.
- 5-11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 5 through 11.
12. The defendant denies the allegations of paragraph 12.

13. The allegations of paragraph 13 contain a description of plaintiffs' action to which no answer is required. However, to the extent that this paragraph may be deemed to include sufficient allegations of fact, the defendant denies them.

14. The allegations contained in paragraph 14 concern defendants other than this defendant, and therefore, no answer is required.

15. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Assuming that the Court has jurisdiction over this matter (the basis for which the defendant is without knowledge or information sufficient to form a belief), the defendant admits that venue is proper.

Facts

17-21. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 17 through 21.

22. The defendant admits that she provided professional medical services to Estella Calhoun at Emerson Hospital, where she was discharged on March 6, 2000. The defendant denies the remaining allegations of paragraph 22.

23-26. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 23 through 26.

Count I-II

27-36. The allegations contained in paragraphs 27 through 36 of Counts I and II concern defendants other than this defendant, and therefore, no answer is required.

Count III

37. The defendant repeats and re-alleges the responses contained in paragraphs 1 through 36 of her Answer, and hereby incorporates them by reference.

38-41. The defendant denies the allegations of paragraphs 38 through 41.

SECOND DEFENSE

The Complaint fails to state a claim against the defendant upon which relief can be granted.

THIRD DEFENSE

The negligence of the plaintiffs contributed to their injuries, and recovery in this action should be barred or diminished in accordance with the provisions of Massachusetts General Laws c. 231, section 85.

FOURTH DEFENSE

The defendant says that the injuries allegedly sustained by the plaintiffs were caused by the act or acts of persons for whose conduct the defendant was not responsible.

FIFTH DEFENSE

The defendant states that the plaintiffs failed to comply with the applicable statute of limitations.

WHEREFORE, the defendant, Marianne Sutton, M.D., demands that the plaintiffs' Complaint be dismissed and that judgment thereon be entered in favor of the defendant, together with costs.

The defendant says that this is a medical malpractice action which is required to be heard by a medical malpractice tribunal, pursuant to Massachusetts General Laws, c. 231, section 60B.

The Defendant,
MARIANNE SUTTON, M.D.
By her attorneys,

I hereby certify that a true copy
of the above document was
served upon the attorney of
record for each party by hand

or mail on 4/1/04

P. R. Greenberg

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Dated: 4/1/04

THE DEFENDANT DEMANDS A TRIAL BY JURY OF ALL OF THE ISSUES.